



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 18, 2000

Dr. Lynn Reno
9417 Eucalyptus Dr.
Bakersfield, CA 93306

Re: Use of Water Right No. 34-00470A

Dear Dr. Reno,

IDWR has once again received complaints this year regarding use of water right 34-00470A on lands other than which this right is appurtenant. Specifically, IDWR has learned that this right, which is diverted to the Upper Fish Hatchery Canal and the shared Reno-Johnson lateral, was used to irrigate land owned by Scott and/or Vic Johnson. IDWR confirmed this use based on a phone conversation with Scott Johnson on August 14, 2000. This discussion followed a field inspection of the lateral by IDWR staff on August 10, 2000. IDWR has also confirmed that the Johnson property is not included as the place of use under right 34-00470A.

The IDWR field investigation of August 10th found about 1 cfs diverted from the Upper Hatchery Canal to the Reno-Johnson lateral. No water was diverted from the lateral but the lateral was discharging to the Shoupe Ditch east of the county road and a relatively short distance below the heading of the ditch. Mr. Johnson confirmed that the lateral does discharge to the Shoupe Ditch. He stated the lateral was turned into the Shoupe Ditch on August 10th and was being re-diverted to flood irrigate the far northeastern portion of your place near Warm Springs Creek. Mr. Johnson admitted to using your water right on a portion of his land for some 12 to 15 days during the irrigation season. He stated that this run had ended on or about August 1. He further stated his use of your right is part of a rotation agreement between the two of you. He stated that a copy of a written rotation agreement was sent to IDWR several years ago but that this particular written agreement may no longer be in effect. He indicated that the two of you continue to rotate rights under a verbal agreement. I have searched Department records for a copy of the agreement described by Johnson but can not locate it.

The purpose of this letter is to advise you that rotation of water on a lateral ditch by two or more water users can not be recognized without an agreement. The Department does not have evidence or a clear understanding of the rotation agreement that currently exists between you and Mr. Johnson. The Department is also concerned that your right may at times be diverted without application to beneficial use. Please note that water rights in Idaho must be beneficially used when diverted.

Please provide information or evidence regarding any rotation agreement to our office within 14 days of the date of this letter.

Idaho Code §42-351 states:

If the director of the department of water resources finds, on the basis of available information, that a person ...is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

This letter is notification that the Department may issue a Notice of Violation upon confirmation that your right is either diverted without application to beneficial use or used on other lands that are not subject to a rotation agreement. Pursuant to Idaho Code, the Notice of Violation can establish civil penalties of \$300 annually per acre, in whole or in part, for continued illegal use or diversion of water.

Please contact me directly at (208) 327-7864 if you have questions concerning this matter.

Sincerely,



Tim Luke
Water Allocations

Cc: David Stoecklein
Doug Rosenkrance, Watermaster
IDWR Eastern Region

Also ccd to : Scott Johnson
Star Rt.
Mackay ID 83251